

Message Text

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PAGE 01 BONN 14934 01 OF 02 151929Z

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 IO-14 A-01 SY-10 CPR-02 USSS-00

FBIE-00 CIAE-00 DODE-00 PM-07 H-03 INR-10 NSAE-00

NSC-10 PA-04 RSC-01 PRS-01 SPC-03 SS-20 USIA-15

ACDA-19 AF-10 ARA-16 EA-11 NEA-10 DRC-01 /197 W

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R 151914Z OCT 73

FM AMEMBASSY BONN

TO USMISSION USUN NEW YORK

INFO SECSTATE WASHDC 8066

AMEMBASSY LONDON

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LONDON FOR NELSON

E.O. 11652: N/A

TAGS: UNGA, PINS, GW

SUBJECT: UNGA - LEGAL COMMITTEE - PROTECTION OF DIPLOMATS

REF: USUN 3897, USUN 3610, USUN 3671

1. DURING MEETING OCT. 15 WITH HOFFMANN, FONOFF LEGAL, AT WHICH EMBOFF MADE POINTS SET OUT IN REFTELS, HOFFMANN INDICATED THAT FONOFF NO LONGER FAVORS FRG-PROPOSAL IN PARIS THAT ARTICLE 1 INCLUDE STATEMENT THAT THE CONVENTION SHALL APPLY ONLY TO ANY DESCRIBED OFFENSE WHICH WAS RELATED TO THE STATUS OF THE INTERNATIONALLY PROTECTED PERSON. HE SAID THIS FORMULATION APPEARED TOO BROAD AND INDEFINITE.

2. HOFFMANN STATED, HOWEVER, THAT ON REVIEW OF RECENT DEVELOPMENTS, WHILE FRG DID NOT FAVOR REQUIREMENT THAT ATTACK HAVE BEEN COMMITTED BECAUSE VICTIM WAS PROTECTED PERSON, I.E. MOTIVE, MERE KNOWLEDGE OR REASON TO KNOW

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PAGE 02 BONN 14934 01 OF 02 151929Z

THAT VICTIM WAS PROTECTED PERSON DID NOT APPEAR TO BE

ENOUGH TO WARRENT APPLICATION OF CONVENTION. HE POINTED OUT THAT WHILE IN US INTERPRETATION THE TERM "INTENTIONAL COMMISSION" IN ARTICLE 2 OF CONVENTION INCLUDES KNOWLEDGE OR REASON TO KNOW THAT THE PERSON ATTACKED WAS AN INTERNATIONALLY PROTECTED PERSON, IT DID NOT IMPOSE THAT REQUIREMENT IN GERMAN TRANSLATION UNDER WHICH LEGAL EFFECT OF "INTENTIONAL" WAS ONLY TO EXCLUDE NEGLIGENT OR UNINTENTIONAL COMMISSION BUT NOT TO REACH SUBJECTIVE INTENTION. HOFFMANN STATED OPINION THAT "REGARDLESS OF MOTIVE" PROBABLY HAD BROADER LEGAL EFFECT IN GERMAN THAN ENGLISH. HIS PARTICULAR CONCERN WAS THAT FOR SAME SET OF FACTS, ALLEGED PERPETRATOR OF ATTACK AGAINST PROTECTED PERSON WOULD, BY REASON OF AGGRAVATED NATURE OF OFFENSE DUE TO ARTICLE 2 (2), BE SUBJECT TO GREATER PENALTY THAN PERPETRATOR OF SAME ATTACK AGAINST NON-PROTECTED PERSON. MIN JUSTICE AND PARLIAMENT WOULD CONSIDER THIS GOES COUNTER TO ARTICLE 3 OF FRG BASIC LAW (CONSTITUTION) WHICH PROVIDES THAT "ALL PERSONS SHALL BE EQUAL BEFORE THE LAW." THIS CONSTITUTIONAL PROVISION IS INTERPRETED TO REQUIRE EQUAL TREATMENT FOR THE SAME OFFENSES, AND TO PROHIBIT UNEQUAL TREATMENT OF PERSONS MERELY BECAUSE IN ONE CASE VICTIM WAS INCIDENTALLY A PROTECTED PERSON AND IN THE OTHER HE WAS NOT.

3. TO COPE WITH CONCERN SUMMARIZED IN PARA 2, HOFFMANN WORKED OUT FOLLOWING TEXT WHICH HE WILL SEEK TO CLEAR WITH FONOFF AND MIN JUSTICE FOR DISCUSSION BY FRG REPS IN NEW YORK:
ADD TO ARTICLE 2 AFTER (E) (CHANGING PERIOD AFTER (E) TO COMMA); BEGIN QUOTE:....UNLESS SUCH ATTACK, THREAT, ATTEMPT OR PARTICIPATION IS OBVIOUSLY NOT RELATED TO THE STATUS OF THE PROTECTED PERSON. END QUOTE

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PAGE 01 BONN 14934 02 OF 02 151927Z

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THIS LANGUAGE, WHILE NOT INSERTING UNDESIREABLE MOTIVE REQUIREMENT, WOULD EXCLUDE FROM THE REACH OF ARTICLE 6 AND FROM THE REQUIREMENT FOR TREATMENT AS AN AGGRAVATED OFFENSE UNDER ARTICLE 2(2), FOR EXAMPLE, THE MURDER BY A HUSBAND OF AN ADULTERER-DIPLOMAT CAUGHT IN THE ACT EVEN THOUGH THE HUSBAND INCIDENTALLY KNEW OR HAD REASON TO KNOW OF THE VICTIM'S OFFICIAL STATUS, THE HOMICIDE NOT BEING RELATED TO THE VICTIM'S STATUS. ON THE OTHER HAND, IF A MUGGER OR ROBBER LIES IN WAIT ON PERSONS EXITING A DIPLOMATIC MISSION AND MUGS OR ROBS A DIPLOMAT BECAUSE HE BELIEVES THAT A DIPLOMAT IS LIKELY TO HAVE MONEY AND VALUABLES IN HIS POSSESSION, THE ATTACK WOULD BE RELATED TO THE DIPLOMAT'S OFFICIAL STATUS. THE AGGRAVATED NATURE OF THE OFFENSE BY THE MUGGER OF DIPLOMATS WOULD BE JUSTIFIED BY THE PERPETRATOR'S REASON FOR CHOOSING A DIPLOMAT AS HIS VICTIM.

4. EMBOFF ASKED TO BE INFORMED WHEN FONOFF PROPOSAL OBTAINS FEDERAL GOVERNMENT CLEARANCE OR IF THE PROPOSAL LIMITED OFFICIAL USE

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PAGE 02 BONN 14934 02 OF 02 151927Z

CLEARED FOR DISCUSSION BY FRG REPS IN NEW YORK DIFFERS FROM ABOVE-QUOTED LANGUAGE. EMBASSY WILL CABLE FURTHER INFORMATION UPON RECEIPT.
HILLENBRAND

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